IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

S.B. CRIMINAL APPEAL NO.229/1988
(Nana Vs. The State of Rajasthan)

S.B. CRIMINAL APPEAL UNDER SECTION 374 Cr.P.C. AGAINST THE JUDGMENT DATED 20.5.1988 PASSED BY THE LEARNED ADDITIONAL SESSIONS JUDGE, CHITTORGARH IN SESSIONS CASE NO.212/85.

DATE OF JUDGMENT : 21th November, 2007

P R E S E N T

HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. Aslam Naushad)
Mr. Rajesh Parihar)
Mr. Jagat Tatia) on behalf of Mr. Manish Shishodiya for the accused appellant.

Mr. JPS Choudhary, Public Prosecutor.

BY THE COURT :

1. This appeal is directed against the judgment & order dated 20.5.1988 passed by the learned Additional Sessions Judge, Chittorgarh in Sessions Case No.212/1985, whereby, he convicted accused appellant Nana for offence under Section 376 IPC and sentenced him to seven years' rigorous imprisonment

and to pay a fine of Rs.250/-, in default of payment of fine to further undergo six months' rigorous imprisonment. Accused appellant Nana was also convicted for offence under Section 366 IPC and sentenced to three years' rigorous imprisonment and to pay a fine of Rs.250/-, in default of payment of fine to further undergo six months' rigorous imprisonment. Both the sentences were ordered to run concurrently.

2. Facts leading to this appeal are that on 7.9.85, a report Ex.P-4 was lodged by one Bheru that his daughter Mst. Sugna aged 13 years has been abducted by accused appellant Nana on 5.9.85 from his village Ochhadi, who was seen by Pema, Hajari and Chhitar going on by-cycle with a woman near railway crossing gate. Upon this report, police registered a case for offence under Sections 363 and 366 IPC. On 8.9.85, informant Bheru has produced his daughter Mst. Sugna at the police station and stated that she was dropped by accused appellant Nana at his mother's place from where she was recovered by Roop Singh and Heera. Mst. Sugna was medically examined, whereby, her age was shown about 16 to 18 years. No mark of injuries were found on her private parts. Her vaginal swab taking for examination was found negative for presence of semen. Statement of Mst. Sugna was recorded under Section 164 Cr.P.C. by the learned Magistrate and after usual

investigation, police filed challan for offence under Sections 363, 366 and 376 IPC. Accused appellant Nana was charged accordingly, to which he pleaded not guilty. Prosecution examined 12 witness. Statement of accused appellant was recorded under Section 313 Cr.P.C. He produced three witness in defence. After hearing the arguments, the learned Additional Sessions Judge, Chittorgarh convicted the accused appellant as indicated above.

3. It has been contended by the learned counsel for the accused appellant that keeping in view the statement of Mst. Sugna recorded under Sections 161 and 164 Cr.P.C. and during trial, there appears major contradictions with regard to committing rape. Learned counsel has also submitted that medical evidence is also negative and Mst. Sugna being major went with accused appellant Nana at her own, therefore, finding of the learned trial Judge is perverse and contrary to the record. Whereas, the learned Public Prosecutor has supported the judgment of the learned trial court.

4. I have re-appreciated the evidence of Mst. Sugna PW-10, who is the prosecutrix in the case, in which, she has stated that she was called by accused appellant Nana and both took bidi. He also told her for leaving Devri for doing job but when she

resisted on account of her parent's fear, she was taken forcibly. She was kept at the residence of one Meena in the night, thereafter, in the hotel at Mangrole and committed rape with her. Accused appellant brought her to Ravaliya and kept her at his mother's house, from where, Heera and Roopa came on motor cycle and took her to village Ochhadi.

5. If this statement of the prosecutrix is looked in the light of her statement given before the learned Magistrate, which is Ex.D-2 recorded on 11.9.85 by Judicial Magistrate, Chittorgarh and statement under Section 161 Cr.P.C. Ex.P-8, it reveals that there is a major contradiction with regard to the commission of rape. The story of rape put forth in the statement recorded in the court and in the statement under Section 164 Cr.P.C. is all together different, in which, she has not stated anything about putting ghaghara and doing forcibly rape. Same is the statement under Section 161 Cr.P.C. Had there been rape with her, during the interval of five days, when she was medically examined on 9.9.85, doctor could have definitely opined that there are marks of injury on her private parts. Even, Docter has not given exact time of intercourse. Her age was also 16 to 18 years, which can easily said to be of a grownup major lady. In this regard, when she was examined by Dr. Pratibha Garg PW-11, she has stated on the basis of Ex.P-14 that there were no

marks of injury on her private part and semen was absent. She has also admitted in the cross examination that there were no marks of blood on her clothes.

6. Further, Mst. Sugna has stated in her statement that she was dropped by Heera and Roop Singh on motor cycle from Ravaliya to Ochhadi. Heera has not been examined by the prosecution and Roop Singh PW-9 has stated even in his examination in chief that he went to village Ravaliya with Heera but he stopped in the mid of the way and it is Heera who took the girl to the house of accused appellant Nana's mother. PW-3 Hajari and PW-4 Pema are the witnesses who saw Mst. Sugna following accused appellant Nana near railway crossing gate of Ochhadi. Both these witnesses have stated that they did not identify the lady but later on came to know that she was daughter of Bheru.

7. Bheru PW-5 who lodged the FIR, has of-course narrated the story about missing of his daughter but he has not said anything that prosecutrix Mst. Sugna who is his daughter ever told about committing rape. Rest of the evidence is of the police officers who investigated the case.

8. The chain of evidence of abducting Mst. Sugna by accused

appellant Nana till her return to the house of appellant Nana's mother shows that neither she has been identified by the witnesses who saw Mst. Sugna following accused appellant Nana nor the evidence of witnesses who dropped her at the house of Nana's mother corroborated the version put forth by Mst. Sugna in addition to the witnesses where she stayed during four days from 5.9.85 to 8.9.85.

9. With regard to the age of prosecutrix, it is approximately 18 years as per medical evidence. This itself leads to an inference that Mst. Sugna, who was major on the date of occurrence, went with accused appellant Nana with her own consent and there is no evidence of rape to justify the conviction for offences under Sections 376 & 366 IPC.

10. Consequently, this appeal is allowed. The conviction and sentences awarded to accused appellant Nana by the learned Additional Sessions Judge, Chittorgarh vide his judgment dated 20.5.1988 are set aside. Accused appellant Nana is on bail. His bail bonds stand cancelled.

(DEO NARAYAN THANVI), J.

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